

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 15 4 26 PM '94

DISPATCHED BY

MM Docket No. 94-100

In the Matter of

Amendment of Section 73.202(b), RM-8509
Table of Allotments,
FM Broadcast Stations.
(Okmulgee, Nowata and Pawhuska,
Oklahoma)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 8, 1994; Released: September 15, 1994

Comment Date: November 7, 1994

Reply Comment Date: November 22, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed jointly by Integrated Broadcasting Company, Inc., licensee of Station KTHK(FM), Okmulgee, Oklahoma, and KRIG, Inc., licensee of Station KRIG(FM), Nowata, Oklahoma ("petitioners"). The petitioners request the substitution of Channel 231C1 for Channel 231C2 at Okmulgee and the modification of Station KTHK(FM)'s license accordingly, as well as the substitution of Channel 286C3 for Channel 232A at Nowata, Oklahoma, and the modification of Station KRIG(FM)'s license accordingly.¹ To accommodate the allotment of Channel 286C3 to Nowata, petitioners also request the substitution of Channel 280A for vacant and unapplied-for Channel 285A at Pawhuska, Oklahoma.

2. We believe the public interest would be served by proposing the substitution of Channel 231C1 for Channel 231C2 at Okmulgee and the substitution of Channel 286C3 for Channel 232A at Nowata, Oklahoma, since it could provide both communities with wide coverage area FM services and enable the respective stations to expand their coverage areas. In accordance with Section 1.420(g) of the Commission's Rules, the licenses of Stations KTHK(FM) and KRIG(FM) can be modified without providing an opportunity for the filing of competing expressions of interest since the proposals constitute upgrades on co- and adjacent channels, respectively.² We also propose the substitution of Channel 280A for vacant and unapplied-for

Channel 285A at Pawhuska, Oklahoma. However, we note that Channel 285A was allotted to Pawhuska in 1985 and remains unoccupied. Therefore, should no party express an intention to apply for the channel in the context of this proceeding, we will delete the channel, without replacement, if the proposed channel changes for Okmulgee and Nowata are ultimately granted.

Technical Summary

3. Channel 231C1 can be allotted to Okmulgee in compliance with the Commission's minimum distance separation requirements at Station KTHK(FM)'s presently licensed site, which is 27.5 kilometers (17.1 miles) northwest of the city. Channel 286C3 can be allotted to Nowata, with a site restriction of 13.6 kilometers (8.4 miles) northwest, to avoid a short-spacing to the construction permit site of Station KBXT, Channel 287C3, Bixby, Oklahoma, and to accommodate KRIG, Inc.'s desired transmitter site. Use of this site restriction does not obviate the short-spacing to the reference coordinates for Channel 287C3 at Bixby. Therefore, final action in this proceeding may be withheld pending the licensing of Station KBXT at the site specified in its outstanding construction permit (BMPH-930819IZ). Alternatively, Channel 285A can be allotted to Nowata at Station KRIG's presently licensed site, which is 12.0 kilometers (7.4 miles) northwest. Channel 280A can be allotted to Pawhuska with a site restriction of 8.4 kilometers (5.2 miles) northwest.³

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Option I		
Okmulgee, Oklahoma	231C2	231C1
Nowata, Oklahoma	232A, 268A	268A, 286C3
Pawhuska, Oklahoma	285A	--

¹ Should the Commission not modify Station KRIG(FM) to specify operation on Channel 286C3, KRIG Radio states that it will accept a modification to Channel 285A. In accordance with Commission policy, Integrated Broadcasting also states its willingness to reimburse Station KRIG(FM) for the reasonable costs associated with its change of channel, if the station's license is modified to specify operation on Channel 285A in lieu of its present Channel 232A.

² Channel 286C3 is mutually exclusive with Channel 232A at

Nowata due to the IF spacing requirement for frequencies which are 53 and 54 channels apart.

³ The coordinates for Channel 231C1 at Okmulgee are 35-50-02 North Latitude and 96-07-28 West Longitude. The coordinates for Channel 286C3 at Nowata are 36-46-13; 95-45-17. The coordinates for Channel 285A at Nowata are 36-44-35; 95-45-17. The coordinates for Channel 280A at Pawhuska are 36-44-00; 96-23-00.

Option II

Okmulgee, Oklahoma	231C2	231C1
Nowata, Oklahoma	232A, 268A	268A, 285A
Pawhuska, Oklahoma	285A	280A

Option III

Okmulgee, Oklahoma	231C2	231C1
Nowata, Oklahoma	232A, 268A	268A, 285A
Pawhuska, Oklahoma	285A	--

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 7, 1994**, and reply comments on or before **November 22, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and com-

ment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as

they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.